

LEASE AGREEMENT

Thomas Whaley House and Grounds
Old Town San Diego

LESSOR: County of San Diego,
a political subdivision of the State of California

LESSEE: _____,

ASSESSOR'S
PARCEL NUMBER: 443-511-28

County Contract Number: _____

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LEASE AGREEMENT

This lease agreement ("Lease") is dated _____, for purposes of reference only and is between the County of San Diego, a political subdivision of the State of California ("County"), and _____, _____ ("Lessee").

ARTICLE 1 LEASE OF PREMISES

County leases to Lessee and Lessee leases from County, for the rent and upon the covenants and conditions set forth in this Lease, approximately 0.50 acres of land improved with an approximate 3,380-square-foot two-story structure known as the "Whaley House Museum", an approximate 1,480-square-foot two-story structure known as the "Derby-Pendleton House", an approximate 1,100-square-foot structure known as the "Verna House Cottage" and two approximate 400-square-foot structures ("Premises") located at the intersection of San Diego Avenue and Harney Street in San Diego, California and further identified as Assessor's Parcel Number 443-511-28. The Premises is further depicted in EXHIBIT "A" DESCRIPTION OF PREMISES of this Lease.

ARTICLE 2 TERM

2.1 Term. The term ("Term") of this Lease is _____ (____) years, beginning on _____ ("Commencement Date"). The term "Lease Year" as used in this Lease shall mean the 12-month period beginning on the Commencement Date and each succeeding 12-month period thereafter during the Term.

2.2 Extension of Lease Term. Provided that Lessee is not in default of this Lease and subject to County consent, which consent may be withheld at County's sole discretion, Lessee may request an extension of the Term of this Lease for _____ (____) additional term of _____ (____) years (each additional term, an "Extension Period"), subject to all original agreements, considerations, covenants, and conditions of this Lease, except for the Rent (defined in Section 3.1) which shall be subject to adjustment adjusted at the beginning of the initial Lease Year of the Extension Period pursuant to Section 3.2 Rent Adjustments of this Lease. To request an Extension Period, Lessee must provide County with written Notice (defined in Section 16.1) no less than one hundred twenty (120) days and no more than three hundred sixty-five (365) days prior to the expiration date of the Term of this Lease. If County does not consent to or deny a request for an Extension Period in a written Notice within ninety (90) days prior to the expiration date of the Term, the request will be deemed denied. If the Extension Period is approved by County, the Extension Period shall begin the day following the expiration of the Term and all references to the Term in this Lease shall include the Extension Period.

2.3 Holding Over. Lessee shall not hold over in the Premises after the expiration or earlier termination of the Term without the express prior written consent of County. To the fullest extent permitted by law and in addition to and without limiting Lessee's indemnification obligations in Section 12.1, Lessee shall indemnify, defend, protect, and hold County harmless from and against all Claims (defined in Section 12.1) arising out of or in connection with any delay by Lessee in surrendering and vacating the Premises as required in Section 2.5. If possession of the Premises is not surrendered to County upon the expiration or earlier termination of the Term, in addition to any other rights and remedies of County under this Lease, Lessee shall pay to County a sum equal to one hundred twenty-five percent (125.0%) of the Rent in effect prior to the holdover. County's acceptance of any payment from Lessee shall not constitute County's consent to any holding over (which consent may only be granted expressly in a written Notice) nor County's waiver of any of County's rights or remedies. If any tenancy is created by Lessee's possession of the Premises following the expiration or earlier termination of the Term, the tenancy shall be on all of the terms and conditions of this Lease, except that Rent shall be increased as set forth above and the tenancy shall be a month-to-month tenancy subject to termination by County with thirty (30) days written Notice to Lessee.

2.4 Lessee Default; County Remedies; Termination of Lease. Subject to the Notice and cure provisions in this section, County shall have all the rights and remedies available at law or in equity upon default by Lessee, including the right to terminate this Lease. The occurrence of one or more of the following events shall constitute a default by Lessee and a breach of this Lease:

- a. Lessee's failure to make any payment required under this Lease when due;
or
- b. Lessee's default in the performance of any covenants, conditions, representations, warranties or other obligations under this Lease, other than those requiring payment to County; or
- c. Lessee voluntarily files any petition under any bankruptcy or insolvency act or law; or
- d. Lessee has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) days of filing; or
- e. Lessee is adjudicated a bankrupt; or
- f. Lessee makes a general assignment for the benefit of creditors; or
- g. Lessee abandons or vacates the Premises for a continuous period in excess

of five (5) days; or

- h. Lessee uses the Premises for any unauthorized purpose.

On the occurrence of a default by Lessee, County shall notify Lessee of a default in a written Notice. If (i) Lessee fails to cure the default within ten (10) days following the receipt of a written Notice from County; or (ii) a default, other than a default requiring payment to County, is not curable within ten (10) days, and Lessee fails to commence to cure the default within ten (10) days and diligently pursue the cure to completion, County shall have all rights and remedies available at law or in equity, including the right to terminate Lessee's right to possession and this Lease. Any failure by County to promptly notify Lessee of a default in accordance with this Lease shall not be deemed a waiver by County of County's rights on default of Lessee or any subsequent default. Even though an event of default may have occurred, this Lease shall continue in effect so long as County does not terminate Lessee's right to possession. County shall have the remedy described in State of California Civil Code Section 1951.4 (County may continue lease in effect after Lessee's breach and abandonment and recover Rent as it becomes due, if Lessee has right to sublet or assign, subject only to reasonable limitations"), or any successor code section. Accordingly, if County does not elect to terminate this Lease on account of any event of default by Lessee, County may enforce all of County's rights and remedies under this Lease, including the right to recover Rent as it becomes due. Acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver under application of County to protect County's interest under this Lease or other entry by County upon the Premises shall not constitute an election to terminate Lessee's right to possession.

2.5 Vacation of Premises. Upon the expiration or earlier termination of this Lease, Lessee shall promptly and peaceably vacate and deliver the Premises to County in the same condition in which the Premises was provided to Lessee on the Commencement Date except for Improvements (defined in Section 11.1) that County elects to keep pursuant to Section 11.1, ordinary wear and tear excepted. Upon the expiration or earlier termination of this Lease, Lessee shall promptly (i) provide a written Notice to County that contains Lessee's forwarding address and contact information, and (ii) deliver all keys to the Premises to County.

2.6 Removal of Improvements. Improvements installed by Lessee in accordance with the provisions of this Lease that are not a replacement or repair of any County-owned improvement on the Premises shall be and remain the property of Lessee, except for Improvements that County elects to keep pursuant to Section 11.1. The Improvements that remain the property of Lessee, shall be removed by Lessee prior to the expiration or earlier termination of this Lease at Lessee's sole expense, provided that any damage to County's property or improvements is repaired and the Premises is left in or restored to the same or better condition as existed on the Commencement Date. If Lessee does not remove Lessee's Improvements prior to the expiration or earlier termination of this Lease, County may remove, sell, or destroy the Improvements at the expense of Lessee, and Lessee shall pay to County the cost to remove, sell, or destroy the Improvements, together with the cost of repairing any resulting damages to County's property or improvements, plus associated administrative

expenses. At the option of County, any of Lessee's Improvements not removed by Lessee may be deemed abandoned pursuant to ARTICLE 19 ABANDONMENT of this Lease.

2.7 Removal of Personal Property. Prior to the expiration or earlier termination of this Lease, Lessee shall remove all of Lessee's personal property, including, but not limited to, movable furniture, trade fixtures, office equipment and supplies ("Personal Property") from the Premises. If Lessee fails to remove all of Lessee's Personal Property from the Premises, County may dispose of the Personal Property as provided in Chapter 5.5 (commencing with Section 1993), Title 5, Part 4, Division 3 of the Civil Code of the State of California. Lessee shall repair, at Lessee's sole expense, any damage to Premises or Property caused by the removal of Lessee's Personal Property.

2.8 Limitation of Lessee Remedies. If County neglects or fails to perform or observe any of the terms, covenants, or conditions of this Lease on County's part to be performed or observed: (1) within thirty (30) days after the receipt of written Notice of default, or (2) when more than thirty (30) days are required because of the nature of the default, and County fails to proceed diligently to cure the default after the receipt of a written Notice of the default, then County shall be liable to Lessee for any and all damages sustained by Lessee as a result of County's breach; provided, however, that:

(a) any money judgment resulting from any default or other Claim (defined in Section 12.1) arising under this Lease shall be satisfied only out of the current rents, issues, profits, and other income County receives from County's operation of Premises, net of all current operating expenses, liabilities, reserves and debt service associated with the operation of the Premises ("Net Income"); or

(b) no other real, personal or mixed property of County, wherever located, shall be subject to levy on any judgment obtained against County; or

(c) if the Net Income is insufficient to satisfy the judgment, Lessee will not institute any further action, suit, Claim, or demand, in law or in equity, against County for or on the account of the deficiency; or

(d) the neglect or failure shall not constitute consent by County for Lessee to perform or observe the terms, covenants, or conditions of this Lease at County's expense; or

(e) in no case shall County be liable to Lessee for any lost profits, damage to business, or any form of special, indirect or consequential damage on account of any breach of or default under this Lease or otherwise, notwithstanding anything to the contrary contained in this Lease, and

(f) Lessee shall have no right to terminate this Lease, except as otherwise expressly permitted in this Lease.

Lessee waives, to the fullest extent permitted by law, any right to satisfy any money judgment against County except from Net Income. Notwithstanding anything to the contrary in this Lease, Lessee's right to seek damages from County as a result of a default by County under this Lease shall be conditioned on Lessee taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Lessee's property or business, or to any of Lessee's officers, employees, agents, invitees, or other third parties that may be caused by any default of County.

2.9 Automatic Termination. If the Permitted Uses (defined in Section 5.1) are (i) prohibited at any time during the Term by any federal, state or local statute, ordinance, regulation, or court opinion ("Use Prohibition"), or (ii) challenged as inconsistent with any use restrictions for the County-owned property that the Premises is part of and the Permitted Uses are deemed by County to be inconsistent with any use restriction ("Use Restriction"), the Term shall automatically terminate as of the effective date of the Use Prohibition or Use Restriction and all Rent owed under this Lease shall be equitably pro-rated on a per diem basis as of the termination date. To the fullest extent permitted by law and in addition to and without limiting Lessee's indemnification obligations to County under Section 12.1 of this Lease, Lessee shall defend and indemnify County Parties (defined in Section 12.1) from any Claim challenging the Permitted Uses as being inconsistent with any Use Prohibition or Use Restriction.

2.10 County's Personal Property. During the Term of this Lease, Lessee shall have use of the County-owned artifacts and fixtures described in Exhibit "C" COUNTY-OWNED ARTIFACTS AND FIXTURES ("County's Personal Property"). Lessee shall be responsible for repair or replacement of any the County's Personal Property damaged as a result of Lessee's use and occupancy of the Premises. The County's Personal Property shall be returned in good order and condition upon the expiration or earlier termination of this Lease. Nothing in this Lease shall transfer ownership of the County's Personal Property.

ARTICLE 3

RENT

3.1 Rent. Subject to the rent adjustment provisions in Section 3.2 of this Lease, Lessee shall pay as rent for the use and occupancy of the Premises the sum of _____ dollars (\$_____) per month ("Rent"). Lessee shall pay Rent in advance, on or before the first day of each calendar month ("Rent Due Date"), without setoff, deduction, prior notice or demand, beginning on the Commencement Date.

3.2 Extension Period Rent. If the Extension Period is approved by County pursuant to Section 2.2, the Rent for the initial Lease Year of the Extension Period shall be subject to an adjustment calculated by County to reflect current market rent for the Premises ("Adjusted Rent"), but in no event shall the Rent be adjusted to an amount less than the Rent for the prior Lease Year, plus _____ percent (____.0%). The Adjusted Rent shall be subject to a _____ percent (____.0%) upward adjustment beginning on the first day of the second year of the

Extension Period and on the first day of each Lease Year thereafter until the expiration of the Term or the earlier termination of this Lease. The Adjusted Rent shall be confirmed in a written Notice sent from County to Lessee.

3.3 Additional Rent. Lessee shall pay to County as “Additional Rent” those charges further described in Section 3.4 and Section 10.3 of this Lease and any other expenses, fees, interest, charges, reimbursements of every kind and nature relating to the Premises that may arise or become due under this Lease that are Lessee’s obligation, whether foreseen or unforeseen. Additional Rent shall be due within fifteen (15) days of the receipt of a written Notice from County to Lessee invoicing the charges for the Additional Rent (“Additional Rent Due Date”).

3.4 Address for Rent and Additional Rent Payments. All Rent and Additional Rent together with other amounts of any kind (other than Rent) payable by Lessee to County under this Lease shall be made payable to the County of San Diego and shall include a reference identifying this Lease by the “County Contract Number” shown on the cover page of this Lease. Rent and Additional Rent shall be considered paid when delivered to:

County of San Diego
Department of General Services - Fiscal Section
RE: County Contract Number _____
5560 Overland Avenue
Suite 410
San Diego, California 92123

County may, at any time, by written Notice to Lessee, designate a different address for the Rent and Additional Rent payments. County may, but is not obligated to, send Rent invoices to Lessee. All Rent due under this Lease is payable on the Rent Due Date regardless of whether Lessee receives a Rent invoice from County. Lessee assumes all risk of loss and responsibility for payment of late charges if payments are made by mail.

3.5 Failure to Pay Rent or Additional Rent; Late Charge.

a. The late payment by Lessee of any Rent or Additional Rent will cause County to incur expenses not contemplated under this Lease, the exact amount of which is difficult or impracticable to determine. These expenses include, without limitation, administrative, collection, processing, and accounting expenses. If any Rent is not paid by Lessee to County within five (5) days following the Rent Due Date, on the sixth day following the Rent Due Date Lessee shall immediately pay to County a late charge equal to five percent (5.0%) of the overdue Rent. If any Additional Rent is not paid by Lessee to County within five (5) days following the Additional Rent Due Date, on the sixth day following the Additional Rent Due Date Lessee shall immediately pay to County a late charge equal to five percent (5.0%) of the overdue Additional Rent. These late charges represent a reasonable estimate of County’s expenses and is fair compensation to County for County’s loss caused by Lessee’s nonpayment. If Lessee pays the late charge but fails to pay all unpaid amounts of Rent or Additional Rent due

under this Lease, County's acceptance of the late charge shall not constitute a waiver of Lessee's default with respect to the nonpayment by Lessee nor prevent County from exercising all other rights and remedies available to County under this Lease or to the fullest extent permitted by law.

b. In addition, if Lessee fails to pay Rent or Additional Rent at the time it is due and payable, any unpaid amounts shall bear interest at the rate of ten percent (10.0%) per year from the date due to the date of payment, calculated on the basis of monthly compounding with actual days elapsed compared to a three hundred sixty (360) day year. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid by Lessee to the extent this interest would cause the total interest to be in excess of that legally permitted. If Lessee pays the interest but fails to pay all unpaid amounts of Rent or Additional Rent due under this Lease, County's acceptance of the interest payment shall not constitute a waiver of Lessee's default with respect to the nonpayment by Lessee nor prevent County from exercising all other rights and remedies available to County under this Lease or to the fullest extent permitted by law.

c. If a dispute arises between County and Lessee as to the correct amount of Rent or Additional Rent owed by Lessee, County may accept any sum tendered by Lessee as payment, without prejudice to County's claim as to the proper amount of Rent or Additional Rent owed. If it is subsequently determined that Lessee has not paid the full amount of Rent or Additional Rent owed, the late charge specified in this Lease shall apply only to that portion of Rent or Additional Rent still due and payable from Lessee. Notwithstanding any provision of this Lease to the contrary, County's Lease Administrator (defined in Section 22.4) may in its sole discretion waive any delinquency payment or late charge upon written application of Lessee.

3.6 Nonsufficient Funds Fee. If Lessee pays Rent or Additional Rent by check and the check is returned to County because of nonsufficient funds ("NSF"), Lessee shall pay County a service charge ("NSF Fee") of twenty-five dollars (\$25.00) for the first NSF occurrence and thirty-five dollars (\$35.00) for any subsequent NSF occurrence during the Term. The NSF Fee is in addition to any late charges due under this Lease. If more than one (1) NSF occurrence takes place during the Term, County may serve written Notice to Lessee that the next Rent or Additional Rent payments, for a period of up to three (3) months, shall be paid in cash. In addition, County may require by providing a thirty (30) day written Notice that all future Rent or Additional Rent payments must be in the form of electronic funds transfer, cashier's check, or money order.

3.7 Order of Payment. Payments received from Lessee shall be applied first to NSF Fees, then any late charges, interest or Additional Rent, then the oldest outstanding balance of Rent.

ARTICLE 4

SECURITY DEPOSIT

Lessee shall pay to County the amount of _____ dollars (\$_____) as security for Lessee's performance of this Lease ("Security Deposit"). County shall not be required to keep the Security Deposit separate from County's general funds, and Lessee shall not be entitled to interest on the Security Deposit. County may apply all or a part of the Security Deposit to any unpaid Rent, Additional Rent, NSF Fee, late charges, interest or other amounts due from Lessee, or to cure any other defaults of Lessee under this Lease, including County's expenses resulting from the repair and cleaning of the Premises upon the expiration or early termination of this Lease. If any portion of the Security Deposit is expended, Lessee shall, within ten (10) days after County's demand, deposit an amount of cash sufficient to restore the Security Deposit to its original amount. If bankruptcy or other debtor-creditor proceedings against Lessee occurs, the Security Deposit shall be applied first to the payment of Rent and Additional Rent due County for the periods prior to the filing of the bankruptcy or other debtor-creditor proceedings. The Security Deposit will not be a limitation on County's damages or other rights under this Lease, or a payment of liquidated damages, or an advance payment of the Rent. If Lessee pays the Rent and Additional Rent and performs all of Lessee's other obligations under this Lease, County will return the unused portion of the Security Deposit to Lessee after the expiration or earlier termination of this Lease in accordance with the law applicable at the time of the expiration or earlier termination of this Lease.

ARTICLE 5

POSSESSION AND USE

5.1 Permitted Uses. Lessee shall use the Premises for the sole purpose of operating a museum and _____ and for other purposes approved by the Director (defined in Section 23.1) in the "Operating Plan" (defined in Section 23.3) ("Permitted Uses") and for no other purpose, unless previously consented to in writing by County, which consent may be granted, conditioned or withheld at County's sole discretion. No one other than Lessee, and Lessee's agents, volunteers, employees, or any sublessee or assignee of Lessee approved by County as provided in ARTICLE 13 ASSIGNMENT AND SUBLETTING is permitted to use the Premises for the Permitted Uses described in this Lease, and Lessee shall be fully responsible for the activities of Lessee Parties (defined in Section 12.1). Lessee understands and acknowledges that the purpose of this Lease is to preserve the historical character of the Premises, while providing educational and recreational opportunities to the public. The general public shall not be wholly or permanently excluded from the Premises or any portion of the Premises, other than areas used for administration, maintenance or other areas as identified in the Operating Plan.

5.2 Duties and Prohibited Conduct. Lessee shall not use nor permit the use of the Premises in any manner that will create waste or a nuisance. Lessee shall not use nor permit any person or persons to use the Premises for the sale or display of any goods and/or services, that, in

the sole discretion of County, are inconsistent with the Permitted Uses. Lessee shall keep the Premises in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the Permitted Uses.

5.3 Compliance with Laws. Lessee, at Lessee's sole expense, shall procure, maintain and hold available for County's inspection any governmental license or permit required for the proper and lawful conduct of Lessee's business. Lessee, at Lessee's sole expense, shall at all times during the Term promptly comply with all applicable federal (including, but not limited to, Americans with Disabilities Act of 1990 ("ADA")(42 USC Sections 12101 - 12213)), state and local laws, statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements ("Laws") regulating Lessee's use of the Premises. The final judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee, in any action or proceeding against Lessee or any sublessee or permittee, whether or not County is a party to the action or proceeding, that Lessee, or any sublessee or permittee, has violated any Laws pertaining to the use of the Premises, shall be conclusive as to the violation between County and Lessee.

5.4 Non-interference. Lessee's use of the Premises shall not unreasonably interfere with public use of the County-owned property adjoining the Premises.

5.5 Non-discrimination. When using the Premises pursuant to this Lease, Lessee shall not discriminate or permit discrimination in any manner against any person or class of persons because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition, family and medical leave, marital status, sex, sexual orientation, age, veteran status or any other status protected by law.

5.6 Fees. Subject to the provisions of the approved Operating Plan, any fee charged for the recreational use of the Premises shall be in a reasonable amount and shall not have the effect of unduly limiting use of the Premises by the public.

ARTICLE 6

UTILITIES AND SERVICES

6.1 Utility Services. Lessee, at Lessee's sole expense, shall provide and pay for all utilities and services necessary for the use and occupancy of the Premises, including, but not limited to, gas, water, electricity, sewage charges or septic service, telephone service and internet service.

6.2 Trash Removal. Lessee, at Lessee's sole expense, shall provide and pay for trash receptacles and trash removal from the Premises and shall maintain all trash receptacles and trash areas in a clean, orderly and first-class condition.

6.3 Custodial Services. Lessee, at Lessee's sole expense, shall provide and pay for all

custodial services necessary to keep the Premises in a clean, orderly and first-class condition.

ARTICLE 7

MECHANICS' LIENS

Lessee shall pay, or cause to be paid, all expenses for work performed by Lessee, or caused to be performed by Lessee, on the Premises, and for all materials furnished for or in connection with any work. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within ten (10) business days after it is filed. To the fullest extent permitted by law and in addition to and without limiting Lessee's indemnification obligations in Section 12.1, Lessee shall indemnify, defend and hold County harmless from any and all liability, loss, damage, attorneys' fees and all other expenses on account of Claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under Lessee.

ARTICLE 8

SECURITY

Lessee shall be responsible for and shall provide for the security of the Premises.

ARTICLE 9

TAXES, ASSESSMENTS AND FEES

9.1 Responsibility for Payment of Taxes and Assessments. County shall not be liable for paying any taxes or assessments accruing against Lessee on the Premises or any interest of Lessee in the Premises before, during or after the Term of this Lease. All tax payments shall be the sole responsibility of Lessee. Lessee shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, fixtures or Personal Property located on the Premises, to the extent that the taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises.

9.2 Definition of Taxes. As used in this Lease, the term "taxes" means all taxes, payments required in association with governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real property tax or Personal Property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Lessee's leasehold interest in the Premises, or (vi) any taxes which are essentially payments to a governmental agency for the right to make Improvements to the Premises.

9.3 Creation of Possessory Interest. Pursuant to the provisions of the State of California Revenue and Taxation Code Section 107.6, Lessee is advised that the terms of this Lease may result in the creation of a possessory interest. If a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on the possessory interest. Lessee shall be solely responsible for the payment of any real property taxes. Lessee shall pay all taxes when due, and shall not allow any taxes, assessments or fees to become a lien against the Premises or any improvement on the Premises. Lessee shall not be prevented or prohibited from contesting the validity of any tax, assessment or fee in a manner authorized by law.

ARTICLE 10 **REPAIRS; MAINTENANCE**

10.1 Acceptance of Premises. Lessee acknowledges that Lessee has made a thorough inspection of the Premises prior to the Commencement Date, and accepts the Premises in its presently existing, “as-is” condition as of the Commencement Date. Lessee acknowledges that County has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee is relying solely on Lessee’s inspection of the Premises with respect to the condition of the Premises.

10.2 Lessee’s Repair, Maintenance, Restoration and Replacement Obligations. Lessee, at Lessee’s sole expense, shall at all times during the Term repair, maintain, restore and replace all portions of the Premises in a good and tenantable condition to the reasonable satisfaction of County. Lessee’s repair, maintenance, restoration and replacement obligations under this Lease shall apply regardless of whether the repairs, maintenance, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Lessee, Lessee’s agents, employees, invitees, visitors, licensees, sublessees or contractors. All replacements made by Lessee in accordance with this Lease shall be of like size, kind and quality to the items being replaced and shall be subject to County’s prior written consent. Upon surrender of the Premises, Lessee shall deliver the Premises to County in good order, condition and state of repair, ordinary wear and tear excepted. Notwithstanding anything to the contrary contained in this Lease, all repairs, maintenance, restorations and replacements performed by Lessee or on behalf of Lessee shall conform with the requirements of Section 11.2.1 Historic Designations of this Lease, as applicable.

10.3 Lessee’s Failure to Repair, Maintain, Restore or Replace. If Lessee refuses or neglects to repair, maintain, replace or restore the Premises in a manner reasonably satisfactory to County, County may, upon giving Lessee written Notice, make the repairs, replacement or restorations or perform the maintenance on behalf of and for the account of Lessee. If County makes or causes any repairs, replacements, restorations, or maintenance to be made or performed, as provided for in this Lease, Lessee shall pay all of County’s expenses, including administrative expenses, as Additional Rent

10.4 County Not Obligated to Repair or Maintain; Lessee's Waiver of State of California Civil Code Section 1942. To the extent that any remedies specified in this Lease conflict or are inconsistent with any provisions of State of California Civil Code Section 1942 ("CC Section 1942"), or any successor statute to CC Section 1942, the provisions of this Lease shall control. Lessee specifically waives any right Lessee may have pursuant to CC Section 1942 to effect maintenance or repairs to the Premises and to set-off any resulting costs from the Rent or Additional Rent due to County under this Lease.

10.5 Certified Access Specialist Inspection. Pursuant to the provisions of State of California Civil Code Section 1938, the Premises has not been inspected by a Certified Access Specialist ("CASp") to determine whether the Premises complies with all applicable construction-related accessibility standards pursuant to State of California Civil Code Section 55.53. A CASp can inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, County may not prohibit Lessee from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the Premises by Lessee, if requested by Lessee. County and Lessee shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the expense of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises. Nothing in this section shall relieve Lessee from complying with all of Lessee's obligations as to the Premises, as set forth in Section 10.2 of this Lease.

ARTICLE 11

IMPROVEMENTS AND ALTERATIONS

11.1 Improvements. Subject to Section 11.2.1 of this Lease, Lessee may, at Lessee's sole expense, from time to time during the Term add fixtures or make permanent nonstructural alterations, replacements, additions, changes, and/or improvements ("Improvements") to the Premises as Lessee may find necessary or convenient for the Permitted Uses, provided that the proposed Improvements will not diminish the value of the Premises. In no event shall Lessee make or cause to be made any penetration into or through the roof or floor of any structure on the Premises without obtaining the prior written consent of County, which consent may be granted, conditioned or withheld in County's sole discretion. Prior to the expiration or earlier termination of the Term, County shall provide a written Notice to Lessee stating whether County elects to keep any Improvements installed by Lessee pursuant to this Section 11.1.

11.2 Construction Requirements. All Improvements made to the Premises shall be made under the supervision of a competent architect or licensed structural engineer and made in conformity with plans and specifications consented to in writing by County prior to the commencement of the work. Lessee shall provide a minimum of three (3) sets of working drawings or plans showing the proposed Improvements, for County's consent, prior to commencing work. All work with respect to any Improvements must be performed in a good

and workmanlike manner, commence within ninety (90) days following County's consent, and diligently completed to ensure that the Premises shall at all times be a complete unit except during the period of work. Upon completion of the work, Lessee shall record a Notice of Completion in the office of the San Diego County Recorder, as required or permitted by law, and Lessee shall deliver to County, within ten (10) days after completion of the work, a copy of the Notice of Occupancy and the building permit for the work. Within sixty (60) days following completion of any Improvements, Lessee shall provide County with two (2) complete sets of "as-built" plans of the Improvements. Lessee shall construct all Improvements in accordance with applicable Laws and shall provide to County unconditional mechanic lien waivers in statutory form executed by contractors, subcontractors, labor suppliers, and materialmen, as the case may be.

11.2.1 Historic Designations. Lessee acknowledges that the following State of California and City of San Diego historic designation apply to portions of the existing improvements on the Premises as follows:

- a. Whaley House - California State Historical Landmark #65 dated December 6 1932.
- b. Whaley House - City of San Diego Historic Site Board #24 dated November 6, 1970.
- c. Derby-Pendleton House - City of San Diego Historic Site Board #32 dated November 16, 1970.

Lessee shall request and obtain consent from County prior to making any Improvements to the inside or the outside of any structure on the Premises or on property grounds, which consent may be granted, conditioned or withheld at County's sole discretion. Any proposed Improvements shall be in conformance with the United States Secretary of the Interior's Standards Treatment of Historic Properties, County historic designations and/or building guidelines, local, state, or National Register of Historic Resources designations. Lessee shall also obtain all necessary approvals from the Historic Site Board where applicable.

11.3 County's Expenses; Indemnity. Lessee shall reimburse County for all reasonable expenses (including, without limitation, any architectural and/or engineering fees) incurred by County in approving or disapproving Lessee's plans for Improvements. To the fullest extent permitted by law and in addition to and without limiting Lessee's indemnification obligations in Section 12.1, Lessee shall be liable for and shall indemnify and defend County from any Claims arising from Lessee's construction or installation of any Improvements consented to by County under this Lease.

11.4 Prevailing Wage. To the extent rent credits, reduced rent, or other payment from County funds Lessee's construction, alteration, demolition, installation, repair, refuse and ready mix concrete hauling, or maintenance work performed on the Premises and the amount of the

payment provided exceeds one thousand dollars (\$1,000), the project shall be deemed a “public work” for prevailing wage purposes. It is not the intent of this Lease to impose an obligation to pay prevailing wages on work otherwise exempt from the State’s prevailing wage laws. Lessee shall be solely responsible for ensuring prevailing wages are paid when owed. Projects subject to the payment of prevailing wages are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Lessee shall be responsible for ensuring all required job site postings and all certified payroll and other reporting applicable to it as an awarding body are completed in accordance with the State’s prevailing wage regulations. Information regarding the State’s prevailing wage requirements can be obtained from the Director, Department of Industrial Relations at: www.dir.ca.gov, State of California Labor Code Section 1720, et seq., and 8 State of California Code of Regulations Section 16000, et seq. (“Labor Code”). To the fullest extent permitted by law and in addition to and without limiting Lessee’s indemnification obligations in Section 12.1, Lessee shall defend, indemnify, protect and hold County and County Parties harmless from any Claims arising in part or in whole from Lessee or Lessee’s agents, contractors, or employees’ noncompliance with the duties prescribed by this section or the requirements imposed by the Labor Code.

ARTICLE 12

INDEMNITY AND INSURANCE

12.1 **Lessee’s Indemnity.** To the fullest extent permitted by law, County shall not be liable for, and Lessee shall hold harmless, defend at Lessee’s own expense and indemnify County and County’s elected officials, officers, employees and agents (collectively, together with County, the “County Parties”), against any and all claims, demands, liabilities (including sums paid in settlement of claims), judgments, awards, penalties, fines, mechanics liens or other liens, labor disputes, losses, damages, personal injury, property damages (real property or Personal Property) or loss, and expenses, charges, or costs of any kind or character (including attorneys’ fees and court costs) (collectively, “Claim” or “Claims”) related to this Lease or Lessee’s occupancy of the Premises and arising either directly or indirectly from any act, error, omission or negligence of Lessee or Lessee’s contractors, licensees, agents, volunteers, invitees, sublessees, servants, employees, [or any trespassers] (“Lessee Parties”), including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of County Parties. Lessee shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that the Claim was caused by the sole negligence or willful misconduct of County Parties. Notwithstanding anything to the contrary in this Lease and to the fullest extent permitted by law, Lessee’s indemnification obligations provided for in this section shall survive the expiration or earlier termination of this Lease.

12.2 **Lessee’s Insurance Obligations.** Without limiting Lessee’s indemnification obligations to County under this Lease, Lessee shall provide and maintain, during the Term and for any other period required in this Lease, at Lessee’s sole expense, insurance in the amounts and form specified in EXHIBIT “B” **INSURANCE REQUIREMENTS**.

12.3 County's Insurance. County maintains a policy of All-Risk Insurance covering County's personal property in the Premises, including any fixtures or equipment in the Premises owned by County. County uses a program of self-funding with regard to any liability it may incur for personal injury or property damage arising out of County's use or occupancy of the Premises.

ARTICLE 13

ASSIGNMENT AND SUBLETTING

Lessee shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, or otherwise transfer all or any portion of the Premises or Lessee's interest in this Lease, or enter into any management agreements, concessions, licenses, or any other arrangement that allows the possession, use, or occupancy of the Premises by anyone other than Lessee (each, a "Transfer"), without County's prior written consent. County's consent to any Transfer shall be conditioned upon the transferee agreeing in writing that it will assume the rights and obligations of Lessee under this Lease with respect to the transferred interest, and that the transferee will keep and perform all covenants, conditions, and provisions of this Lease that are applicable to that interest. County may withhold consent to any Transfer at County's sole discretion. Any attempted Transfer without County's consent shall be void and shall constitute a default by Lessee under this Lease.

ARTICLE 14

COUNTY'S RIGHT OF ACCESS

14.1 County's Right to Enter Premises. County and County's agents, employees, and contractors may enter the Premises at any time to perform work, services or an inspection in response to any event or situation County deems an emergency. In addition, County, County's agents, employees, and contractors may enter the Premises at reasonable hours and upon reasonable notice to:

- a. Inspect the Premises; or
- b. Exhibit the Premises to prospective purchasers or leaseholders; or
- c. Investigate and determine whether Lessee is complying with Lessee's obligations under this Lease, including Lessee's obligations with respect to compliance with Hazardous Materials Laws (defined in Section 17.3.1); or
- d. Provide any service that this Lease requires or authorizes County to provide; or

- e. Post notices of non-responsibility or other legal notices; or
- f. Make repairs that this Lease requires or authorizes County to make; or
- g. Make repairs to any adjoining space or utility equipment or facilities; or
- h. Make repairs, alterations, or improvements to any other portion of the Premises or the County-owned property where the Premises is located; or
- i. Perform any work that may be necessary to comply with Laws; or
- j. Perform any work that County may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not perform the work promptly after receipt of written Notice from County; or
- k. Perform any work that County may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any County-constructed or County-owned property, facilities, or improvements on or off the Premises.

All work performed by County will be completed as promptly as reasonably possible and in a manner that causes as little interference to Lessee as reasonably possible. Nothing in this Lease shall imply any duty on the part of County to do any work which, under any provision of this Lease, Lessee may be required to do, nor shall County's performance of any repairs on behalf of Lessee constitute a waiver of Lessee's default in failing to do the work. If County exercises any of County's rights under this Lease, Lessee shall not be entitled to any compensation, damages or abatement of Rent or Additional Rent from County for any resulting injury or inconvenience.

14.2 Lessee's Waiver of Damage Claims. Lessee waives any claim of injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss caused by County's entry onto the Premises. Where applicable, Lessee shall provide County with keys to unlock all of the doors in the Premises (excluding Lessee's vaults, safes, and similar areas designated in writing by Lessee in advance). County shall have the right to use any means that County may deem proper to open entry doors to the Premises and passage doors within the Premises in the event of an emergency. County's entry onto the Premises by any means shall not be considered to be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any part of the Premises, nor shall County's entry onto the Premises entitle Lessee to damages or an abatement of Rent, Additional Rent or other charges that this Lease requires Lessee to pay.

ARTICLE 15
QUIET ENJOYMENT

Upon Lessee's compliance with all requirements under this Lease, and subject to all rights of County under this Lease, Lessee shall peacefully and quietly have, hold and enjoy the Premises throughout the Term, without hindrance, ejection or molestation by County, or any person lawfully claiming through or under County.

ARTICLE 16
NOTICES

16.1 Notices. All notices, demands, requests or other communication required or permitted to be given under this Lease ("Notice" or "Notices") shall be in writing, include a reference identifying this Lease by the "County Contract Number" shown on the cover page of this Lease, and shall be (i) delivered in person to an officer or an authorized representative of the other party, (ii) sent by United States Postal Service First Class Mail, postage prepaid, or (iii) sent using a nationally recognized courier delivery service, with proof of service, to the following addresses:

If to County: County of San Diego
Attention: Director, Department of General Services
RE: County Contract Number _____
5560 Overland Avenue, Suite 410
San Diego, California 92123

If to Lessee: _____

If to Director: County of San Diego
Attention: Director, Department of Parks and Recreation
RE: County Contract Number _____
5500 Overland Avenue
Suite 410
San Diego, California 92123

Notices mailed by the United States Postal Service shall be deemed to have been given, delivered and received three (3) business days after the date the Notice is postmarked by the United States Postal Service. Notices delivered by a courier delivery service shall be deemed to have been given, delivered and received upon proof of service. All other Notices or other communications shall be deemed given, delivered and received upon actual receipt. At any time, County or Lessee may, by written Notice delivered to the other party pursuant to this section,

designate a different address to which Notices shall be sent.

16.2 Default Notices. Notwithstanding anything to the contrary in this Lease, any Notice from County regarding a default by Lessee must be in writing but shall be deemed duly given or served upon Lessee by County attempting to deliver at the Premises during normal business hours a copy of the Notice to Lessee or if Lessee is not present at the Premises, Lessee's employee pursuant to State of California Code of Civil Procedure Section 1162(b) and by County mailing a copy of the Notice to Lessee in the manner specified in Section 16.1 of this Lease.

ARTICLE 17

MANDATORY PROVISIONS

17.1 Affirmative Action Program for Vendors. During the Term of this Lease, Lessee shall comply with the Affirmative Action Program for Vendors pertaining to employment of disabled persons, as set forth in Article IIIK (commencing at Section 84) of the San Diego County Administrative Code, which is incorporated into this Lease by this reference. Lessee is informed that County's Affirmative Action Program for Vendors provides that the requirements of the program shall not apply to any lessee, or subcontractor of a lessee, who has a regular, paid workforce of less than fifteen (15) employees. A copy of this Affirmative Action Program will be furnished to Lessee by County's Lease Administrator upon Lessee's request.

17.2 Compliance with Stormwater Laws. Lessee's use of the Premises is subject to all federal, state and local laws, statutes, regulations, ordinances, policies and guidelines ("Stormwater Laws") regarding the discharge of pollutants into the stormwater conveyance system. Lessee's compliance with Stormwater Laws may include requirements for Lessee to develop, install, implement and maintain pollution prevention measures, source control measures and Best Management Practices ("BMPs"). BMPs can include operational practices, water or pollutant management practices, physical site features, or devices to remove pollutants from stormwater, to affect the flow of stormwater or to infiltrate stormwater to the ground. BMPs applicable to Lessee's use of the Premises may include a requirement that all materials, wastes or equipment with the potential to pollute urban runoff be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff for treatment and disposal. Lessee is required to and shall use, operate, maintain, develop, redevelop and retrofit the Premises, as necessary, in accordance with Stormwater Laws restricting the discharge of non-stormwater at or from the Premises and Stormwater Laws requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Lessee shall develop, install, implement and/or maintain at Lessee's sole expense, any BMPs or similar pollution control devices required by Stormwater Laws and any implementing regulations or guidance. Lessee understands and acknowledges that the Stormwater Laws applicable to Lessee's use of the Premises may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Lessee's activities or development or redevelopment by Lessee or County. Lessee shall conduct annual stormwater

training, perform regular stormwater self-inspections, maintain records of all stormwater training and self-inspections and provide all necessary documentation to County upon request. Lessee shall develop, install, implement, and maintain any additional BMPs and/or other pollution control practices at the Premises at Lessee's sole expense. To the extent there is a conflict between any federal, state or local law, Lessee shall comply with the more restrictive provision. If County receives any fine or fines from any regulatory agency as a result of Lessee's failure to comply with Stormwater Laws, Lessee shall reimburse County for the entire amount of the fine(s).

17.3 Hazardous Materials.

17.3.1 Hazardous Materials Laws - Definition. As used in this Lease, the term "Hazardous Materials Laws" means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations, or court decisions (including "common law") relating to hazardous substances, hazardous materials, waste, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions, including without limitation the Resource Conservation and Recovery Act of 1976 (42 U.S.C., Section 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C., Section 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C., Section 1801 et seq.), the State of California Hazardous Waste Control Act and the Carpenter-Presley-Tanner Hazardous Substance Account Act (State of California Health and Safety Code Section 25100, et seq., and Section 25300, et seq.), the Safe Drinking Water and Toxic Enforcement Act (State of California Health and Safety Code Section 25249.5, et seq.), the Porter Cologne Water Quality Control Act (State of California Water Code Section 13000 et seq.), and the California Environmental Quality Act of 1970, and any amendments to, and regulations implementing, the foregoing.

17.3.2 Hazardous Materials - Definition. As used in this Lease the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

a. Is a flammable, explosive, asbestos, radioactive nuclear medicine agent or waste, vaccine or pharmaceutical and related wastes, bio-hazardous waste or infectious agent (including but not limited to infectious bodily fluids), wastes with recognizable human blood or any human tissue, sharps wastes, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; or

b. Is controlled, referred to, designated in or governed by any Hazardous Materials Laws; or

c. Gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or

d. Is any other material or substance giving rise to any liability,

responsibility or duty upon County or Lessee with respect to any third person under any Hazardous Materials Laws.

17.3.3 Lessee's Hazardous Materials Obligations. During the Term, or for a longer period as may be specified in this Lease, Lessee shall comply with the following provisions unless otherwise specifically consented to by County in a written Notice, which consent may be withheld at County's sole discretion:

a. Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Lessee, Lessee's agents, employees, sublessees, assigns, contractors, licensees or invitees, except as required by the Permitted Uses.

b. Any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that occurs on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws.

c. Any leak, spill, release, discharge, emission or disposal of Hazardous Materials which occur on the Premises following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises by Lessee at Lessee's sole expense, and any Hazardous Materials discharge shall be promptly reported in writing to County, and to any other appropriate governmental regulatory authorities.

d. No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises.

e. No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Lessee on the Premises.

f. Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises in accordance with all applicable Hazardous Materials Laws and to the satisfaction of County.

g. Activities proposed by Lessee that involve disturbing asbestos materials on site shall only be conducted in accordance with all federal, state and local asbestos rules and regulations including, but not limited to, the United States Occupational Safety and Health Administration ("OSHA"), the United States Environmental Protection Agency ("EPA"), California Occupational Safety and Health Administration ("Cal/OSHA"), and the Air Pollution Control District ("APCD"), with prior written consent of County, as follows:

(1) Prior to conducting asbestos related activities, Lessee shall provide written Notice to County at least thirty (30) days in advance of the proposed work. The written Notice shall include the location of work, type of asbestos containing material ("ACM") to be removed and a work plan indicating the work practices and methods of control to be used

during the abatement activity to control asbestos fiber release (“Work Plan”). County’s Occupational Health Program shall review the Work Plan and may modify the Work Plan as necessary.

(2) Any asbestos related activities shall be performed by a contractor registered with Cal/OSHA and certified by the California Contractors State Licensing Board to perform asbestos work. Any asbestos related activities shall be overseen by a California Certified Asbestos Consultant (“CAC”), or a Certified Site Surveillance Technician under the direction of a CAC.

(3) Replacement products used in the Improvements or other construction activities shall not contain asbestos. Any replacement products used by Lessee shall be verified as non-asbestos products by using Material Safety Data Sheets and/or having the architect or project engineer verify that ACMs were not used.

h. Lessee shall provide County with copies of all notices, reports, correspondence, and submissions made by Lessee to the OSHA, Cal/OSHA, the EPA and the APCD, and any other federal, state or local authority that requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials Laws.

i. Lessee shall promptly notify County of any liens threatened or attached against the Premises pursuant to any Hazardous Materials Laws. If a lien is filed against the Premises, then within twenty (20) days following the filing or before any governmental authority commences proceedings to sell the Premises pursuant to the lien, whichever occurs first, Lessee shall either: (i) pay the Claim and remove the lien from the Premises; or (ii) furnish either (1) a bond or cash deposit reasonably satisfactory to County in an amount not less than the Claim from which the lien arises, or (2) other security satisfactory to County in an amount not less than that which is sufficient to discharge the Claim from which the lien arises. Upon the expiration or earlier termination of this Lease, Lessee shall surrender the Premises to County free of any and all Hazardous Materials and in compliance with all Hazardous Materials Laws affecting the Premises.

17.3.4 Indemnification by Lessee. To the fullest extent permitted by law and in addition to and without limiting Lessee’s indemnification obligations in Section 12.1, Lessee (and, if applicable, each of Lessee’s general partners) and Lessee’s successors, assigns, and guarantors, if any, jointly and severally shall protect, indemnify, defend (with counsel selected by County), reimburse and hold County and County Parties harmless from any Claims that arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials, including the soil, ground water or soil vapor on or under the Premises. Without limiting the generality of the foregoing, the indemnification provided by this section shall cover all expenses incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the

Premises, and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.

17.3.5 Remedies Cumulative; Survival. The provisions of this Section 17.3 shall be in addition to any and all common law obligations and liabilities Lessee may have to County, and any remedies and the environmental indemnities provided for in this Section 17.3 shall survive the expiration or earlier termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

17.3.6 Inspection. County and County's agents, contractors, consultants, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by County, may (but without the obligation or duty to do so), from time to time during reasonable hours, or at any time in the event of an emergency, inspect the Premises to investigate and determine whether Lessee is complying with Lessee's obligations under this Section 17.3, including performance of environmental inspections and samplings. If County determines that Lessee is not in compliance with Lessee's obligations, County shall have the right, but not the obligation, in addition to County's other remedies available at law and in equity, to enter the Premises immediately or at any time deemed appropriate by County and take any action that County in County's sole judgment deems appropriate to remediate any actual or threatened contamination. County will use reasonable efforts to minimize interference with Lessee's use of Premises but shall not be liable for any interference caused by County's entry, inspection, investigation, sampling, or remediation efforts. Upon completion of any inspection, County will use reasonable efforts to repair any area of the Premises damaged by County's sampling and testing conducted as part of the investigation, provided that the restoration work and materials will be at Lessee's sole expense if County conducted the sampling and testing in response to Lessee's breach or default under this Lease.

17.4 Energy Conservation by Lessee. Lessee shall be responsible for using energy conservation measures in the operation of all activities on the Premises and shall comply with all existing and newly enacted Laws relating to the conservation of energy.

17.5 Energy Conservation. County is required to comply with all Laws requiring the installation of energy-efficient systems, fixtures, and equipment at County buildings and facilities. In accordance with all Laws and pursuant to the provisions of this Lease, Lessee shall maintain or repair, or cause to maintain or repair, the Premises, and related systems in accordance with current energy conservation standards.

17.6 Allocation of Costs for Energy Conservation Systems, Fixtures, and Equipment. During the Term of this Lease, County may be required to install new energy-efficient systems, fixtures, or equipment in the Premises or to serve the Premises. County shall be entitled to reasonably and equitably allocate the costs it incurs in connection with the installation of new energy-efficient systems, fixtures, or equipment. County shall be entitled to amortize the cost of any capital improvements to any building, machinery or equipment installed that is made or

becomes operational during the Term of this Lease and which has the effect of reducing Lessee's expenses that otherwise would be billed as operating costs. County shall have the option of allocating additional operating costs to lessees or occupants at either the actual cost or at a level equal to the projected or proven, operating cost reductions to Lessee.

17.7 Water Conservation by Lessee. As applicable to the Permitted Uses, Lessee shall be responsible for using water conservation measures in the operation of all activities on the Premises. Lessee shall cooperate with County, and any local water district or public agency having jurisdiction over the Premises, in all practical and reasonable forms of water conservation including drought-resistant landscaping, automatic flow-control irrigation systems, and low-flow plumbing fixtures and equipment as delineated in County Board of Supervisors Policy A-106 "Water Supply, Conservation, and Reclamation." Lessee shall comply with all existing and newly-enacted Laws relating to the conservation of water and any mandated emergency water conservation orders from County and any local water district or public agency having jurisdiction over the Premises.

17.8 Recycling and Waste Reduction. Lessee shall comply with County recycling and waste reduction policies, procedures and programs as they apply to Lessee's use of the Premises. Lessee shall conduct Lessee's operations on the Premises in accordance with all applicable Laws pertaining to recycling and waste reduction.

17.9 Packaging Materials. Lessee shall not use polystyrene packaging materials or materials of a similar nature for "to go" and pre-packaged food items. Packaging used by Lessee shall conform to recycling requirements in accordance with all applicable Laws and must be compostable or recyclable food service ware. Compostable products include coated and uncoated paper or other natural fiber products as well as plant-based plastic-like products that are clearly labeled as "compostable" recyclable products such as aluminum foil, plastic tubs and lids marked recyclable.

ARTICLE 18

WAIVER OF RELOCATION ASSISTANCE BENEFITS

18.1 Relocation Assistance Benefits. Lessee is informed and acknowledges the following:

a. By entering into this Lease and becoming a tenant of County, Lessee may become entitled to receipt of "relocation assistance benefits" ("Relocation Benefits") pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. Section 4601 et seq.) and/or the California Relocation Assistance Law (State of California Government Code Section 7270 et seq.) (collectively, the "Relocation Statutes") should County at some time make use of the Premises in such a way as to "displace" Lessee from the Premises. Pursuant to the Relocation Statutes, County may then become obligated to make payments to Lessee even where the displacement of Lessee does not otherwise constitute a breach or default by County of County's

obligations pursuant to this Lease.

b. Under the Relocation Statutes in effect as of the Commencement Date, Relocation Benefits may include payment to a “displaced person” of (i) the actual and reasonable expense of moving himself or herself and a family, business, or farm operation, including Personal Property, (ii) the actual direct loss of reestablishing a business or farm operation, but not to exceed ten thousand dollars (\$10,000), or (iii) payment in lieu of moving expenses of not less than one thousand dollars (\$1,000) or more than twenty thousand dollars (\$20,000).

18.2 Lessee’s Waiver and Release of Relocation Benefits. In consideration of County entering into this Lease, Lessee waives any and all rights Lessee may now have, or may subsequently obtain, to Relocation Benefits arising out of County’s assertion or exercise of County’s contractual rights to terminate this Lease pursuant to its terms, whether or not the rights are contested by Lessee or any other entity, and releases County from any liability for payment of Relocation Benefits. Lessee does not waive Lessee’s rights to Relocation Benefits to the extent that Lessee’s entitlement to Relocation Benefits may arise out of any condemnation or pre-condemnation actions taken by County or any other public agency with respect to the Premises. Lessee shall in the future execute any further documentation of the release and waiver provided by this article as reasonably required by County.

ARTICLE 19

ABANDONMENT

Lessee shall not vacate, abandon or permit the Premises to remain unoccupied for a period of longer than five (5) consecutive days during the Term of this Lease. If Lessee abandons, vacates or surrenders the Premises, or is dispossessed by process of law, or otherwise, then any Improvements (other than Improvements that County elects to keep pursuant to Section 11.1) or Personal Property belonging to Lessee that are left on the Premises shall, at the option of County, be deemed abandoned. County may dispose of any Improvements or Personal Property deemed abandoned in any manner provided by Laws and is relieved of all liability for disposing any Improvements or Personal Property. Lessee waives any right to notice Lessee may have under State of California Civil Code Section 1951.35, the terms of Section 2.4 being deemed such notice to Lessee as required by said Section 1951.35. These provisions shall not apply if the Premises are closed and business temporarily discontinued due to a Force Majeure event as defined in Section 22.11 of this Lease.

ARTICLE 20

DAMAGE OR DESTRUCTION

20.1 Casualty. If the Premises is damaged or destroyed by fire, flood, earthquake, tornado, or other casualty (“Casualty”), Lessee shall give immediate written Notice of the Casualty to County (“Casualty Notice”). Within thirty (30) days after County’s receipt of the

Casualty Notice, County shall notify Lessee whether in County's estimation material restoration of the Premises can reasonably be made within one hundred eighty (180) days from the date of the Casualty Notice and receipt of required permits ("Restoration Permits") for restoration of the Premises ("Restoration"). County's determination shall be binding on Lessee.

20.2 Restoration Within 180 Days. If the Premises is damaged by a Casualty to an extent that the Restoration can in County's estimation be reasonably completed within one hundred eighty (180) days after the date of the Casualty Notice and receipt of Restoration Permits, this Lease shall not be terminated. Provided that Lessee's insurance proceeds are received by County to fully complete the Restoration, County shall proceed with the Restoration of the Premises diligently and in a manner determined by County, except that County shall not be required to rebuild, repair or replace any part of any Improvements placed on the Premises by Lessee. If the Premises are not tenantable in whole or in part following the Casualty, the Rent payable under this Lease during the period in which the premises is not tenantable shall be abated proportionately, but only to the extent of rental abatement insurance proceeds received by County during the time and to the extent the Premises are not tenantable.

20.3 Restoration Greater than 180 Days. If the Premises is damaged by a Casualty to an extent that the Restoration cannot in County's estimation be reasonably completed within one hundred eighty (180) days after the date of the Casualty Notice and receipt of Restoration Permits, then County may: (1) terminate this Lease effective as of the date of the Casualty, in which event the Rent shall be abated during the unexpired portion of this Lease; or (2) elect to proceed with the Restoration of the Premises diligently and in the manner determined by County. County shall notify Lessee of County's election within thirty (30) days after County's receipt of the Casualty Notice. Notwithstanding anything to the contrary in this section, County shall not be obligated to rebuild, repair or replace any part of any Improvements placed on the Premises by Lessee. If the Premises is not tenantable in whole or in part following the Casualty, the Rent payable by Lessee under this Lease during the period in which the Premises is not tenantable shall be abated proportionately, but only to the extent of rental abatement insurance proceeds received by County during the time and to the extent the Premises are not tenantable.

20.4 Casualty Caused by Lessee. Notwithstanding anything to the contrary in this Lease, if the Premises are damaged by a Casualty resulting from the fault, negligence, or breach of this Lease by Lessee or Lessee Parties, the Rent, Additional Rent or any other sums owed by Lessee under this Lease shall not be reduced or abated during the Restoration and Lessee shall be liable to County for the all expenses related to the Restoration to the extent the expenses are not covered by insurance proceeds.

20.5 Insurance Proceeds. Notwithstanding anything to the contrary in this Lease, if the Premises are damaged or destroyed by a Casualty and the Restoration is not fully covered by the insurance proceeds received by County, then County shall have the right to terminate this Lease by delivering a written termination Notice to Lessee within thirty (30) days after County's receipt of a Notice informing County that the Casualty is not fully covered by insurance.

20.6 Casualty Related Waiver. The provisions of this ARTICLE 20 shall be Lessee's sole and exclusive remedy if the Premises is damaged by a Casualty. As a material inducement to County entering into this Lease, Lessee hereby waives any rights it may have under Sections 1932, 1933(4), 1941 or 1942 of the Civil Code of the State of California with respect to any destruction of the Premises, County's obligation for the tenantability of the Premises and Lessee's right to make repairs and deduct the expenses of the repairs, or under any similar law, statute or ordinance in effect on the Commencement Date or enacted during the Term of this Lease.

20.7 Lessee's Personal Property. County shall not be obligated to repair any injury or damage to or make any repairs to or replacements of Lessee's Personal Property resulting from a Casualty.

ARTICLE 21

EMINENT DOMAIN

21.1 Condemnation. If more than twenty-five percent (25.0%) of the total area of the Premises is condemned, taken or appropriated by any public or quasi-public authority under the power of eminent domain, police power or otherwise (or in the event of a sale in lieu thereof), either County or Lessee may terminate this Lease as of the date that the condemning authority takes possession by delivery of written Notice of the election within twenty (20) days after the party has been notified of the taking or, in the absence of a Notice, within twenty (20) days after the condemning authority has taken possession.

21.2 Continuation of Lease After Condemnation. If this Lease is not terminated by County or Lessee, or if less than twenty-five percent (25.0%) of the total area of the Premises is taken, the Lease shall remain in full force and effect as to the portion of the Premises remaining; provided, however, that the Rent shall be reduced in proportion to the reduction of the area of the Premises.

21.3 Allocation of Condemnation Award. Any and all payment, income, award, or any interest whatsoever which may be paid or made in connection with the taking of any part of the Premises or proceeds from the sale made under the threat of the exercise of the power of eminent domain, shall be the property of County, whether made as compensation for diminution of value of the leasehold estate, for the taking of the fee, or as severance damage; provided, however, that Lessee shall be entitled to any award for loss of or damage to Lessee's Improvements, Personal Property and business good will.

21.4 Waiver. Lessee waives the provisions of State of California Civil Code Section 1265.130 allowing Lessee to petition the superior court to terminate this Lease as a result of a partial taking.

ARTICLE 22

GENERAL PROVISIONS

22.1 Authority and Legal Status. Lessee represents and warrants that it has full power and authority to execute and fully perform Lessee's obligations under this Lease pursuant to Lessee's governing instruments, without the need for any further action, and that the person(s) executing this Lease on behalf of Lessee are the duly designated agents of Lessee and are authorized act on behalf of Lessee.

22.2 Brokers. Lessee warrants that Lessee has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. To the fullest extent permitted by law and in addition to and without limiting Lessee's indemnification obligations in Section 12.1, if any broker makes a Claim for monies owed, Lessee shall indemnify, defend and hold County harmless from the Claim.

22.3 Captions. The captions, headings and table of contents appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.

22.4 Lease Administration. This Lease shall be administered on behalf of County by the Director, Department of General Services or a designee (the "County's Lease Administrator"), and on behalf of Lessee by _____ or by another person designated in a written Notice by Lessee (the "Lessee's Lease Administrator").

22.5 County Consent and Approval. Except where stated in this Lease to the contrary, the phrases "County's consent", "County's written consent", "Director's approval" or "Director's written approval" or similar phrases shall mean consent from the County's Lease Administrator or the Director.

22.6 Lessee's Lease Administration. Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Lease. Lessee shall provide County with a written schedule of Lessee's normal hours of business operation on the Premises, and Lessee's Lease Administrator or a representative designated by Lessee shall be (i) available to County on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) present on the Premises during Lessee's normal business hours, to resolve problems or answer questions pertaining to this Lease and Lessee's operations on the Premises.

22.7 Business Days. The term "business days" as used in this Lease means any calendar day other than a Saturday, Sunday, or official County holiday.

22.8 Cumulative Remedies. If a default under this Lease occurs, each party's remedies shall be limited to those remedies set forth in this Lease. The remedies under this Lease are cumulative and not exclusive of any other remedies under this Lease to which the non-defaulting

party may be entitled.

22.9 Entire Agreement. This Lease, together with all addenda, exhibits and riders attached to this Lease, constitutes the entire agreement between County and Lessee with respect to the subject matter of this Lease, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

22.10 Estoppel Certificate. Lessee shall at any time during the term of this Lease, within five (5) business days of receipt of a written Notice from County, execute and deliver to County a statement in writing certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of the modification. Lessee's statement shall include other details requested by County, such as the date on which the Rent and other charges are paid, the current ownership and name of Lessee, Lessee's knowledge concerning any outstanding defaults with respect to County's obligations under this Lease and the nature of any defaults. Lessee's statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Lessee's failure to deliver the statement within five (5) business days of receipt of a written Notice from County shall be conclusively deemed to mean that this Lease is in full force and effect, except to the extent any modification has been represented by County, that there are no uncured defaults in County's performance under this Lease, and that not more than one (1) installment of Rent has been paid in advance.

22.11 Force Majeure. If County or Lessee is prevented or delayed from performing any act or discharging any obligation under this Lease, except for any payment obligation of Lessee, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Lease or Lessee's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Lessee's negligent operation or maintenance of the Premises ("Force Majeure"), performance of the act shall be excused for the period of the delay, and the period for performance of the act shall be extended for a period equivalent to the period of the delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial circumstances of Lessee.

22.12 Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

22.13 Interpretation. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against either party.

22.14 Joint and Several Liability. If more than one person or entity executes this Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee under this Lease.

22.15 Liquidated Damages. Any payments by Lessee to County under this Lease described as liquidated damages represent the parties' reasonable estimate of County's actual damages under the described circumstances, the actual damages being uncertain and difficult to ascertain in light of the impossibility of foreseeing the state of the leasing market at the time of the various deadlines set forth in this Lease. County may, at County's election, take any of the liquidated damages assessed in any portion of this Lease as direct monetary payments from Lessee and/or as an increase of Rent due from Lessee under this Lease.

22.16 Modification. The provisions of this Lease may not be modified, except by a written instrument signed by County and Lessee.

22.17 Partial Invalidity. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected by the determination. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

22.18 Payments. Except as otherwise be expressly stated in this Lease, each payment required to be made by Lessee shall be in addition to, and not a substitute for, other payments to be made by Lessee under this Lease.

22.19 Successors and Assigns. This Lease shall be binding on and inure to the benefit of County and Lessee and their successors and assigns, except as may otherwise be provided in this Lease.

22.20 Time of Essence. Time is of the essence for each and every provision of this Lease.

22.21 Waiver. No provision of this Lease or the breach of any provision of this Lease shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by County of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of the term, covenant or condition of any subsequent breach of the term, covenant or condition, or of any other term, covenant or condition contained in this Lease. County's subsequent acceptance of partial Rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease or of any right of County to a forfeiture of the Lease by reason of the breach, regardless of County's knowledge of the preceding breach at the time of County's acceptance. The failure on the part of County to require exact or full and complete compliance with any term, covenant, or condition of this Lease shall not modify or waive the term, covenant or condition, or estop County from any related enforcement. No custom or practice that may arise between County and Lessee in the course of administering this Lease shall be construed to waive, estop or in any way lessen County's right to insist upon Lessee's full performance of, or compliance with, any term, covenant or condition of this Lease by Lessee, or to inhibit or prevent County's exercise of County's rights with respect to any default, dereliction or breach of this Lease by Lessee.

22.22 Singular and Plural. Words used in this Lease in the singular, where the context so permits, shall be deemed to include the plural. Words used in this Lease in the plural, where the context so permits, shall be deemed to include the singular.

ARTICLE 23

SPECIAL PROVISIONS

23.1 Director. The term “Director” as used in this Lease means the County’s Director, Department of Parks and Recreation or a designee. Any Notice or approvals required from the Director under this Lease shall be sent to the address in Section 16.1 Notices.

23.2 Lessee’s Organization. Membership in Lessee’s organization may be denied on the basis of licensure, safety, or other criteria approved by the Director. Lessee shall notify the Director of any membership denials as they occur with the reason for the denial. Lessee shall not discriminate against a member or prospective member as provided in Section 5.5 Non-discrimination of this Lease. At the beginning of each Lease Year during the Term and upon the request of the Director, Lessee shall provide the Director with a copy of Lessee’s articles of incorporation, by-laws and rules. Lessee shall provide the Director with any proposed changes to the articles of incorporation, by-laws and rules during the Term. At the beginning of each Lease Year during the Term, Lessee shall provide the Director a list of Lessee’s members.

23.3 Annual Operating Plan. Upon the Commencement Date, and at the beginning of each Lease Year during the Term, Lessee shall submit an Operating Plan (“Operating Plan”) for the succeeding Lease Year for review and written approval by the Director, which approval may be granted, withheld or conditioned at the Director’s sole discretion. During each Lease Year the Operating Plan may be amended, subject to review and written approval by the Director, which approval may be granted, withheld or conditioned at the Director’s sole discretion. Lessee shall operate the Premises in accordance with the approved Operating Plan. At a minimum, the Operating Plan shall include:

a. Interpretive Plan. An interpretive plan describing the general content, format and frequency of materials and events that will be used to interpret the history of the site._____.

b. Building Use and Maintenance. A description of the proposed uses for each building and a building maintenance schedule that addresses the preservation of the historical structures. The Whaley House must be used as a museum open and accessible to the public.

c. Furnishings. A schematic room plan of each room in the Whaley House Museum and inventory of all items and artifacts in each room, including the County’s Personal Property described in Section 21.0 and EXHIBIT “C” COUNTY-OWNED ARTIFACTS AND

FIXTURES.

d. Inventory. A current inventory of all items and artifacts in the buildings on the Premises excluding any building or portion of a building that is subleased.

e. Housekeeping and Curation Plan. A housekeeping and curation plan for the items and artifacts and a procedure to acknowledge donations.

f. Marketing. A marketing plan including a strategy to advertise the Whaley House Museum including, but not limited to, brochures, pamphlets, special events, news releases and a website that provides information on the Whaley House Museum, the Lessee's organization and County.

g. Programs and Activities. A plan for programs and activities including the days and hours of operation, the types and frequencies of programs and special events, and a fee schedule for programs and activities.

h. Management, Staffing, Hours of Operation. A plan for management and staffing including the minimum days and hours of operation of the Premises. Lessee may operate the Premises for periods earlier or later than the designated hours. Lessee's staff shall always be on the Premises when any buildings are open to the public, except for any portions of the Premises that have been subleased.

i. Customer Satisfaction Surveys. A plan for conducting customer satisfaction surveys and implementing corrective actions in response to the surveys.

j. Landscaping. Subject to the provisions of ARTICLE 11 of this Lease, any proposed changes to be made to the landscaping, walkways and site amenities.

k. Security. As required by ARTICLE 8 of this Lease, a description of the proposed methods for securing the grounds, buildings and furnishings.

l. Special Event Fees. Subject to the provisions of Section 5.6 of this Lease, a proposed fee schedule for special event activities and special event fees on the Premises. Lessee shall submit proposed fees for Director approval to ensure fair and reasonable amount. No fee shall be charged for entrance to the grounds unless as part of a special event approved by the Director in the operating plan.

m. Merchandise. A plan for the operation of a museum gift shop, concession and bookstore on the Premises.

23.4 Use of Proceeds. All funds Lessee receives from admission fees, special events, merchandise sales and subleases from the operation of the Premises shall be accounted for and shall be used for improvements, development, maintenance, and program operations on the

Premises or to promote the Premises.

23.5 Records, Accounts, and Audits. The Operating Plan shall include an annual financial statement that accounts for all of Lessee's revenue and expenditures related to the operation of the Premises. Lessee shall, at all times during the Term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted on the Premises. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices or other pertinent documents. All Lessee's books, accounts and records shall be kept and made available to County at one location within the limits of the County of San Diego. County shall have the right at any reasonable time to examine and perform audits of Lessee's records pertaining to Lessee's operations on the Premises. Audits shall be conducted at County's sole expense; however, Lessee shall provide to County, at Lessee's sole expense, all necessary data to enable County to fully perform County's audit.

23.6 Affiliation. Lessee acknowledges that it is an independent organization and is not affiliated with any County department or division.

**THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK
THE SIGNATURES ARE ON THE FOLLOWING PAGE**

SIGNATURES

County and Lessee have duly executed this Lease as of the day and year written below. This Lease shall be effective as of the date of its execution by County's Director of the Department of General Services.

Lessee:

County:

County of San Diego,
a political subdivision of the State of California

By: _____

Title: _____

By: _____

Marko Medved, P.E., CEM, Director
Department of General Services

Date: _____

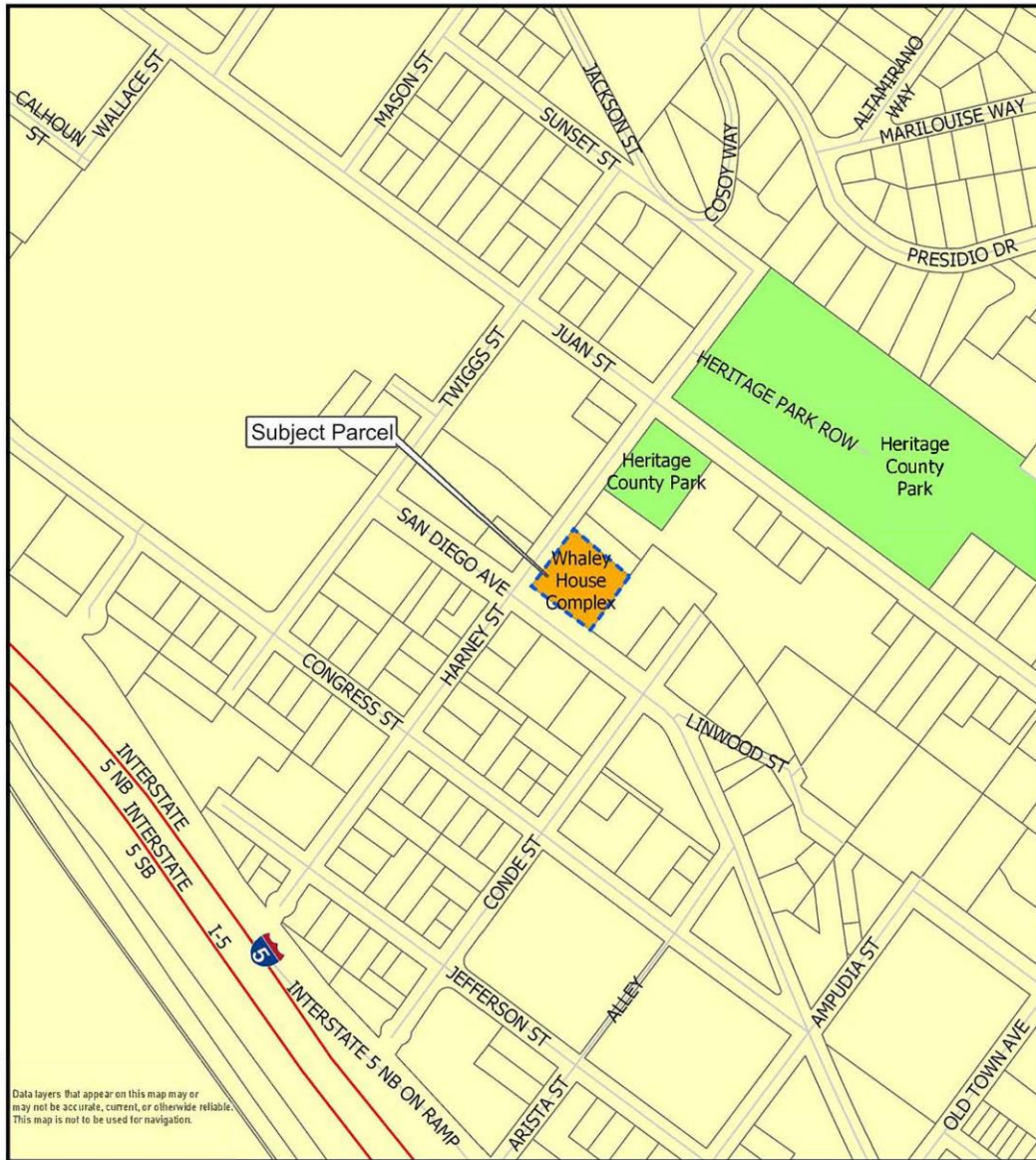
Date: _____



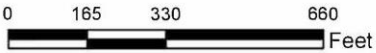
Approved as to form and legality:

By: _____

Inna Zazulevskaya,
Senior Deputy County Counsel

EXHIBIT "A"
DESCRIPTION OF PREMISES
Location Map



			<p>Legend:</p> <div style="display: flex; align-items: center;"> <div style="width: 20px; height: 10px; border: 2px dashed blue; margin-right: 5px;"></div> <div> <p>Subject Parcel</p> <p>APN: 443-511-28</p> <p>RPN: 2020-0036-A</p> </div> </div>
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: 2020-0036-WHALEY2
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EXHIBIT "A"
DESCRIPTION OF PREMISES
Site Map

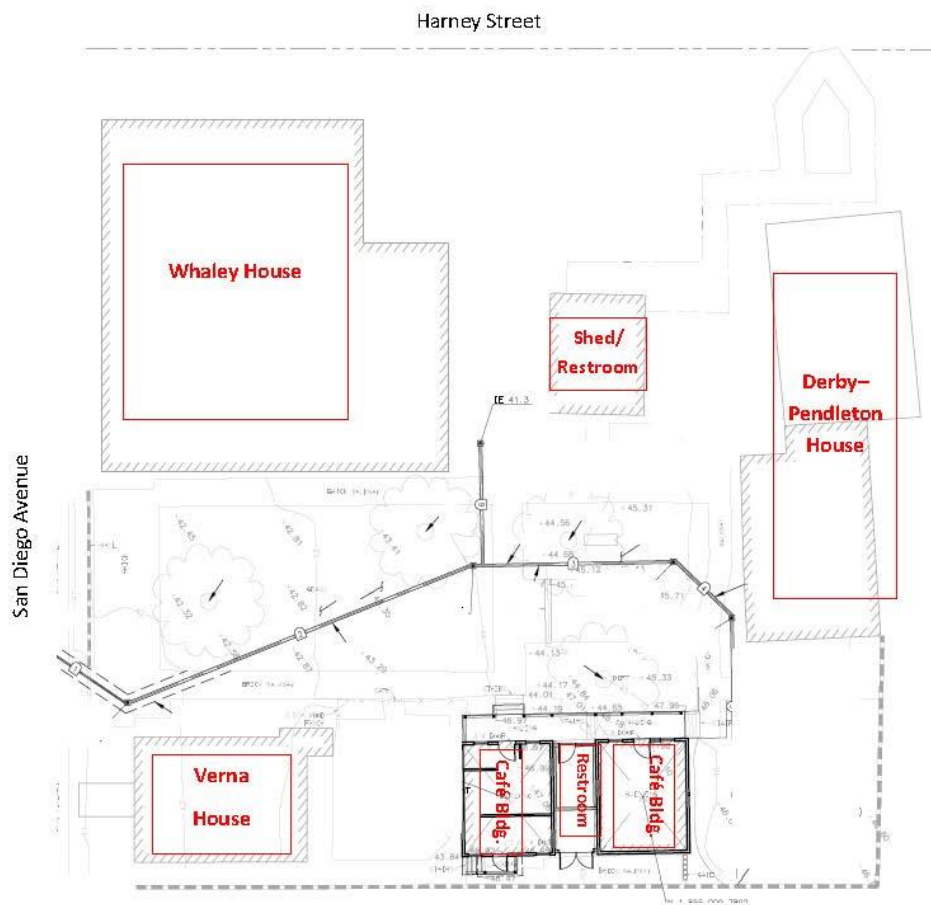


EXHIBIT “B”
INSURANCE REQUIREMENTS

In addition to and without limiting Lessee’s indemnification obligations in Section 12.1 of this Lease, Lessee shall provide and maintain during the Term and for any other period required in this Lease, at Lessee’s sole expense, the insurance described in this EXHIBIT “B” for use against Claims (defined in Section 12.1) for injuries to persons or damages to property which may arise from or in connection with Lessee’s operation and use of the Premises.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability. Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.
- B. Automobile Liability. Automobile Liability covering all owned, non-owned and hired auto, Insurance Services Office form CA0001.
- C. Workers Compensation. Workers Compensation, as required by State of California and Employer’s Liability Insurance.
- D. Property Insurance. Property Insurance against all risk or special form perils, including Replacement Cost coverage, without deduction for depreciation, for Lessee’s merchandise, fixtures owned by Lessee, any items identified in this Lease as improvements to the Premises constructed and owned by Lessee, and the Personal Property of Lessee, Lessee’s agents and employees.
- E. Rental Income Assurance. Rental Income Insurance assuring County of receiving the minimum Rent from the time the Premises are damaged or destroyed with a minimum period of coverage for one (1) year.

2. Minimum Limits of Insurance

Lessee shall maintain limits no less than:

- A. Commercial General Liability. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be four million dollars (\$4,000,000) and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire): three hundred thousand dollars (\$300,000) and Medical Expense Limit (Any One Person): five thousand dollars (\$5,000).

- B. Automobile Liability. Automobile Liability: one million dollars (\$1,000,000) each accident for bodily injury and property damage.
- C. Employers Liability. Employers Liability: one million dollars (\$1,000,000) each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of the County of San Diego.
- D. Property Insurance. Property Insurance: Full replacement cost with no coinsurance penalty provision.

If Lessee maintains broader coverage and/or higher limits than the minimums stated above, County requires and shall be entitled to the broader coverage and/or higher limits maintained by Lessee. As a requirement of this Lease, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to County.

3. Deductibles and Self-Insured Retentions

Any liability deductible or self-insured retention must be declared to and approved by County Risk Management. The property insurance deductible shall not exceed five thousand dollars (\$5,000) per occurrence and shall be borne by Lessee.

4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

- A. Additional Insured Endorsement. The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of Lessee including materials, parts, or equipment furnished in connection with the work or operations and automobiles owned, leased, hired or borrowed by or on behalf of the Lessee. General Liability coverage can be provided in the form of an endorsement to Lessee's insurance (at least as broad as ISO form CG 2010 11 85 or **both** CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used).
- B. Primary Insurance Endorsement. For any Claims related to this Lease, Lessee's insurance coverage, including any excess liability policies, shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any

insurance or self-insurance maintained by the County, County's officers, employees, or volunteers shall be excess of Lessee's insurance and shall not contribute with Lessee's insurance.

- C. Notice of Cancellation. Lessee shall provide County with thirty (30) days prior notice of cancellation or non-renewal of any insurance Lessee is required to maintain pursuant to this Lease.
- D. Severability of Interest Clause. Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.
- E. Loss Payee Clause. Property policy shall name County as loss payee as its interests may appear. Loss, if any, shall be adjustable with and payable to County as trustee for all entities having an insurable interest, except in cases that may require payment of all or a proportion of the insurance to be made to a mortgagee as its interest may appear.

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A-, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is consented to in writing by County Risk Management, which consent may be withheld at County's sole discretion.

6. Evidence of Insurance

Prior to the Commencement Date of this Lease, Lessee shall furnish County with a copy of the policy declaration and endorsement pages along with the certificates of insurance and amendatory endorsements effecting coverage required by this Lease. Policy declaration and endorsement pages shall be included with renewal certificates and amendatory endorsements submissions and shall be furnished to County within thirty (30) days of the expiration of the term of any required policy. Lessee shall permit County at all reasonable times to inspect any required policies of insurance.

7. Failure to Obtain or Maintain Insurance; County's Remedies

The occurrence of one or more of the following events shall constitute a default by Lessee and a breach of this Lease:

- a. Failure to provide the insurance specified in this Lease.
- b. Failure to furnish certificates of insurance and amendatory endorsements.
- c. Failure to make the premium payments required by the insurance.

If a breach of the any of the foregoing requirements occurs, County shall have the remedies provided in Section 2.4 Lessee Default; County Remedies; Termination of Lease of this Lease.

8. No Limitations of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of the insurance by County are not intended to and shall not in any way limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to this Lease, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required in this Lease and may require Lessee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Lessee may, with the prior written consent of County's Risk Management, which consent may be withheld at County's sole discretion, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Lessee shall only be permitted to utilize self-insurance if in the opinion of County's Risk Management, Lessee's (i) net worth, and (ii) reserves for payment of Claims of liability against Lessee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit or qualify the liabilities and obligations assumed by Lessee under this Lease, including, but not limited to, the provisions concerning indemnification.

11. Sublessees' Insurance

Lessee shall require any sublessee, and any sub-sublessee, of all or any portion of the Premises to provide the insurance coverage described in this Lease prior to occupancy of the Premises.

12. Waiver of Subrogation

Lessee and County waive all rights to recover against each other or against any other tenant or occupant of the Premises, or against the officers, directors, shareholders, partners, employees, agents or invitees of each other or of any other occupant or tenant of the Premises from any Claims against either of them and from any damages to the fixtures, Personal Property, Lessee's improvements, and alterations of either County or Lessee in or on the Premises, to the extent that the proceeds received from any insurance carried by either County or Lessee, other than proceeds from any program of self-insurance, covers any Claims or damage. Included in any policy or policies of insurance provided by Lessee shall be a standard waiver of rights of subrogation against County by the insurance company issuing the policy or policies.

EXHIBIT “C”
COUNTY-OWNED ARTIFACTS AND FIXTURES
List of Artifacts and Fixture Items

Thomas Whaley House Artifacts

Thomas Whaley House Artifacts

Parlor	Quantity	Description
1	1	Lithographic portraits of Thomas and Anna Whaley
2	1	Framed Whaley California Society of Pioneers certificate over downstairs
3	1	Fireplace
4	1	Empire settee
5	1	Cast iron andirons
6	1	Organ
7	1	Marriage certificate
8	1	Wooden bones (musical instrument)
9	1	Rosewood sofa
Study		
10	1	Small square marble-top table
11	1	Walking stick and cane
12	1	Book-lectures from history 1838
13	1	Secretary desk, books, papers, marbles
14	1	Desk chair Whaley family coat of arms
15	1	Globe
16	1	Letterpress books, notebooks, real estate records and account books
17	1	Platform rocker
Courtroom		
18	1	Oak Desk/Library Chair; Black Leather Upholstered Back/Seat; Oak; Leather; Canvas; Horsehair
19	2	Pine Sheraton Style Deacon’s Bench (2 matching); Curved Arms; Tapered Back Spindles; Single Rail Stretcher at Front & Back (originally a set of three; one bench irreparably broken and was removed)
20	1	Late 19 th century library chair; wood (possibly mahogany), Cattail/Arrowback Spindles; Curved Arms
21	7	Mid-19 th century oak chair, tightly woven rattan back/seat, carved crest, curved arms
22	1	1860-1870 redwood table, painted faux bois legs/frame, top replaced (possible maple), turned legs, five drawers with keyholes
23	1	Late 19 th century freestanding coat/hat stand; oak; 13 double hooks

24	2	1880 Eastlake desk; walnut; one drawer with brass handle; stretcher/shelf with half-circle cut out
25	4	Set of three joined walnut juror's chairs; each set joined by underseat stretcher
Nursery		
26	1	Rectangular-shaped white porcelain dresser tray with blue children and trees design around edge. C.1920
27	1	Limoges "doll's" tea set-4 cups and matching saucers, teapot and creamer and sugar. C.1870
Master Bedroom		
28	1	Nursing rocker – black leatherette seat padded slanted arms
29	2	Paintings of Whaley cousins and niece
Kitchen		
30	1	Maple chair with 3-horizontal slats, leather thongs and hide seat
31	1	Chair with vertical slats, rounded top
32	1	Round oak table with 5-legs
General Store		
33	1	Front counter in Pharmacy
Display Case in General store		
34	1	Carving sets, stag horn handles
35	1	White porcelain mustache cup with 14k gold gilt design on edges and handle. C.1870
36	1	German porcelain cup and saucer-red and gold etching-gold on inside of cup-saucer is green. C.1870
37	1	Silver plate coffeepot from the Whaley service. C.1880
38	1	Alligator purse, gun, keys
39		Autograph book
40	1	Thomas and Anna Whaley personal items, including vest, pocket watch, toothpick, opera glasses and assorted items
41	2	Sterling silver relish spoons
42	1	White porcelain w/14kg.trim Limoges China coffee service consisting of the following: coffeepot, creamer and sugar-all pieces trimmed w/14k rope design. C.1870
43	1	Salt glaze pitcher with inset figure of a man and woman. Export. C. 1870
44	5	Limoges custard cups and matching saucers-edges of both are ruffled and flowered. C.1880
45	1	Blue iridescent crystal vase-double lining-flowered design. C.1860
Café Dining Room		

46	1	Shelves, built-in
Collections Room		
47	2	Framed display of calling cards
48	1	Thomas Whaley's hat
49	1	Whaley Family coat of arms
50	1	Whaley family papers, clothing, jewelry, etc. in display case
51	1	Whaley family bible, books with Whaley and family bookplates
52	1	Gown, black Chantilly lace, Anna Whaley
53	1	Shoes
54	1	Anna Whaley dresses and several pair of shoes
Fixtures		
55		All drapes and curtains affixed to the windows directly or by curtain rods
56		All light-switch fixtures and plates affixed to walls by screws
57	1	Chandelier in courtroom
58	1	Chandelier in front parlor
59	1	Electric kerosene hanging lamp in theatre (old master bedroom)

Derby Pendleton House Artifacts

Derby-Pendleton House	Quantity	Description
60	1	Portrait of Whaley family in Spanish costume